

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Expanding the Economic and Innovation)	GN Docket No. 12-268
Opportunities of Spectrum Through Incentive)	
Auctions)	

**COMMENTS OF LIMA COMMUNICATIONS CORPORATION, INDEPENDENCE
TELEVISION COMPANY, WAND(TV) PARTNERSHIP, IDAHO INDEPENDENT
TELEVISION, INC., AND WEST CENTRAL OHIO BROADCASTING, INC.**

By their attorneys and pursuant to Section 1.415 of the Commission’s rules,¹ Lima Communications Corporation, Independence Television Company, WAND(TV) Partnership, Idaho Independent Television, Inc., and West Central Ohio Broadcasting, Inc. (collectively, the “Block Stations”), hereby file these comments in response to the Wireless Telecommunications Bureau’s (the “Bureau”) May 17, 2013 public notice in the above-captioned proceeding.²

I. The Commission’s Proposed “Split” and “Variable” Band Plan Options Violate the Spectrum Act’s Requirements for Protection of Existing Television Service.

The *May 17 Notice* demonstrates that the Bureau has fundamentally misinterpreted the Commission’s incentive auction authority under the Spectrum Act.³ Congress expressly limited the Commission’s authority by requiring the process to preserve – at the very least – the service areas and populations of existing full power and Class A low power television stations.⁴ As the

¹ 47 C.F.R. §1.415

² Wireless Telecommunications Bureau Seeks To Supplement the Record on the 600 MHz Band Plan, *Public Notice*, GN Docket No. 12-268, DA 13-1157, released May 17, 2013 (the “*May 17 Notice*”). See also Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, *Notice of Proposed Rulemaking*, 27 FCC Rcd 12357 (2012).

³ See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6403(b)(2), 125 Stat. 156 (2012) (the “Spectrum Act”).

⁴ Spectrum Act at § 6403(b)(2).

Block Stations explained in their earlier comments in this proceeding, both the language and legislative history of the Spectrum Act require the Commission to adopt rules that carry out this mandate to preserve current broadcast service; it does not permit the Commission to diminish the over-the-air broadcast service in the name of maximizing spectrum recovery or revenue for the U.S. Treasury.⁵ Despite this unambiguous Congressional command, the *May 17 Notice* announces that the Bureau, at least, continues to consider several exotic and unworkable proposals that the record already thoroughly demonstrates will substantially degrade over-the-air TV service. These proposals – for a “split” and a “variable” band plan – have no purpose except maximizing spectrum recovery and revenue but will place severe handicaps on broadcasters’ future operations in the form of increased interference and inevitable conflict with new wireless users. The Spectrum Act requires that both of these plans be rejected without further consideration.

A. A “Split” Band Plan Option Would Create Unacceptable Levels of Interference in Both Congested and Uncongested Markets.

First, the Bureau seeks further comment on a proposal for a “split” band plan that would create two blocks of spectrum for wireless use sandwiched around several channels of spectrum that would continue to be used for TV broadcasting.⁶ Numerous commenters in this proceeding already have explained that the “split” band plan would subject broadcasters placed in the so-called “duplex gap,” as well as wireless operators using adjacent frequencies, to unacceptable

⁵ See Comments of Lima Communications Corporation, Independence Television Company, WAND(TV) Partnership, Idaho Independent Television, Inc., and West Central Ohio Broadcasting, Inc., GN docket No. 12-268, filed Jan. 25, 2013, at 3-7. Reply Comments of Lima Communications Corporation, Independence Television Company, WAND(TV) Partnership, Idaho Independent Television, Inc., and West Central Ohio Broadcasting, Inc., GN Docket No. 12-268, filed Mar. 12, 2013, at 1-4.

⁶ *May 17 Notice* at 5.

levels of interference.⁷ The record unequivocally shows that the “split” band plan is a recipe for disaster for the public interest. The Commission should have ceased consideration of that idea months ago, yet the *May 17 Notice* states that it is still under Bureau consideration.

The *May 17 Notice* does not respond to the facts shown in the record, but merely asks if the problems will be lessened if TV stations are assigned to the duplex gap only in “constrained markets,” *i.e.*, only those markets where spectrum is most difficult to recover.⁸ That question itself shows a remarkable misunderstanding of the problems created by placing TV stations in the duplex gap. In spectrum-constrained markets, both TV and wireless spectrum will be used most intensively. In those markets, having high-power TV stations on channels surrounded by lower-power wireless operations will be more, not less, of a problem. The Spectrum Act requires the Commission to preserve current broadcast service, not set up a TV spectrum band plan that guarantees future interference disputes, litigation, and degraded service to both TV viewers and wireless consumers. A “split” band plan cannot be adopted consistent with the Spectrum Act’s dictates and should be abandoned immediately.

B. A “Variable” Band Plan Would Substantially Degrade Local Television Service in Favor of Recovering Lightly-Used Wireless Uplink Spectrum.

Second, the *May 17 Notice* discloses that the Bureau is apparently intent on adopting a “variable” band plan that would recover greater amounts of spectrum in some markets than it does in others.⁹ Again, the record compiled in response to the *NPRM* shows that a variable band plan would lead to substantial co-channel interference among TV stations and wireless operators

⁷ See, *e.g.*, Comments of the National Association of Broadcasters, GN docket No. 12-268, filed Jan. 25, 2013, at 34-39 (“NAB Comments”); Comments of Verizon and Verizon wireless, GN Docket No. 12-268, filed Jan. 25, 2013, at 18-19; Comments of AT&T Inc., GN Docket No. 12-268, filed Jan. 25, 2013, at 19 (“AT&T Comments”).

⁸ *May 17 Notice* at 5.

⁹ *Id.* at 3-5.

in adjacent markets.¹⁰ And again, the Bureau is ignoring those concerns – and the inevitable diminution and degradation of TV broadcast service that would flow from adoption of a variable band plan – in favor of recovering a greater amount of spectrum for wireless services. The Spectrum Act simply does not permit the Commission to engage in this trade-off. The Commission is permitted to recover only as much spectrum as practicable *after* it guarantees protection of existing full-power and Class A TV broadcast stations. The variable band plan gets this equation backwards, protecting broadcasters and viewers only after it has maximized spectrum recovery. That plan blatantly violates Section 6403 of the Spectrum Act and cannot be lawfully implemented.

Moreover, the variable band plan will degrade the TV broadcast service in other ways not intended by Congress. For example, the *May 17 Notice* proposes to implement a variable band plan by flipping the uplink and downlink spectrum, resulting in establishment of a fixed nationwide block of downlink frequencies in the upper 600 MHz and a variable block of uplink frequencies, with fewer uplink channels in spectrum-constrained markets and more uplink channels in smaller markets.¹¹ This is a naked spectrum recovery maximization plan designed to reclaim as much spectrum as possible in small markets. The extra TV spectrum the Commission would recover in smaller markets through this plan is currently used by low-power television stations and translators that often play an essential role in delivering network-affiliated and local television programming to viewers. If the Commission takes that spectrum for wireless uplink,

¹⁰ See, e.g., NAB Comments at 39-45; Comments of CBS Corporation, Fox Entertainment Group, Inc., NBCUniversal Media, LLC, The Walt Disney Company, and Univision Communications Inc., GN Docket No. 12-268, filed Jan. 25, 2013, at 9; AT&T Comments at 27-28.

¹¹ *May 17 Notice* at 3-4.

there will not be enough TV spectrum left to relocate these stations, and viewers will lose important services.

It would be the height of arbitrary and capricious agency action to replace relied-upon TV services with additional paired uplink spectrum because, as the record shows, dedicating spectrum exclusively to wireless uplink spectrum is extremely inefficient given the large asymmetry between uplink and downlink wireless data traffic.¹² The asymmetry between downlink and uplink wireless traffic currently is so great that even advocates of allocating paired spectrum suggest that the ratio of uplink to downlink channels should be no more than 1:2.¹³ Yet if the Commission adopts the variable band plan proposed by the Bureau, with reversed uplink and downlink, it could end up with even more uplink channels than downlink channels in some markets. This would be a truly irrational result.

Replacing important, relied-upon low-power TV services with substantially underutilized uplink wireless spectrum would not advance the public interest in any discernable way. While the Commission is not required by the Spectrum Act to protect the low power television service, its incentive auction band plan still must be rational and serve the public interest. The Communications Act, the Administrative Procedure Act, and the U.S. Constitution require no less. The proposed variable band plan that seeks to recover additional TV spectrum for

¹² See, e.g., Comments of Spectrum Bridge, Inc., GN Docket No. 12-268, *et al.*, filed Jan. 25, 2013, at 3; Comments of Sprint Nextel Corporation, GN Docket No. 12-268, filed Jan. 25, 2013, at 18-21; Reply Comments of Sprint Nextel Corporation, GN Docket No. 12-268, filed Mar. 12, 2013, at 16-18. See also Comments of Clearwire Corporation, GN Docket No. 12-268, filed Jan. 25, 2013, at 7.

¹³ See, e.g., Reply Comments of Dish Network Corporation, GN Docket No. 12-268, filed Mar. 12, 2013. See also Comments of Qualcomm Incorporated, GN Docket No. 12-268, filed Jan. 25, 2013 at 16 (estimating downlink to uplink traffic ratio as sometimes reaching 10:1); Comments of Research in Motion Corporation, GN Docket No. 12-268, filed Jan. 25, 2013, at 9 (noting that traffic asymmetry should lead to greater amounts of spectrum being recovered for downlink purposes).

unnneeded wireless uplink use fails that test and would be overturned before it could go into effect.

II. CONCLUSION

For the foregoing reasons, the Block Stations urge the Commission to adopt rules consistent with the principles described above and in the Block Stations' previous comments in this proceeding. The auction rules and the post auction band plan must afford TV broadcasters and their viewers protection from interference as mandated by the Spectrum Act.

Respectfully submitted,

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